

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claim 10 is currently being amended.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-7 and 10-13 remain pending in this application.

Allowable Subject Matter

Applicant appreciates the indication of allowable subject matter in claims 5 and 6. As is provided in the remarks below, Applicant believes claim 1 to be in condition for allowance. Claims 5 and 6 depend, either directly or indirectly, from allowable claim 1 and are, therefore, patentable for at least that reason, as well as for additional patentable features when those claims are considered as a whole.

Rejections under 35 U.S.C. § 101

The Examiner has rejected claim 13 as being directed towards non-statutory subject matter. The Examiner suggests that “the claim limitations are nothing more than instructions for computer code.” (Page 2). Applicant respectfully traverses this rejection for at least the following reasons.

“[W]hen functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized.” *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994). See M.P.E.P. § 2106.01. Applicant directs the Examiner’s attention to the explicit preamble of the claimed invention which provides a “computer program product,

embodied on a computer-readable medium.” Thus, claim 13 functional descriptive material and, therefore, constitutes statutory subject matter. Accordingly, Applicant respectfully requests that this rejection be withdrawn.

Rejections under 35 U.S.C. § 112 ¶ 1

The Examiner has rejected claims 10 and 13 under 35 U.S.C. § 112 ¶ 1 as failing to comply with the written description requirement.

The Examiner rejects claim 10 for reciting various controllers that were allegedly not sufficiently described in the specification. In order to expedite prosecution, Applicant has amended claim 10 to delete the language objected to by the Examiner.

As to claim 13, the Examiner argues that “a computer program product” and “computer code” were not described in the specification sufficiently. Applicant respectfully traverses this rejection for at least the following reasons.

Applicant notes that certain embodiments of the invention relate to the operation of devices such as controllers. In most cases, such operation methods are implemented as computer code installed on, for example, a memory device of the controller. In this regard, one of ordinary skill in the art would readily understand that certain methods related to the invention may be implemented as computer code in a computer program product which would be embodied on a computer-readable medium.

Further, Applicant notes that it was well known in the art at the time of the filing of the present invention that such operations are readily implemented in computer program products.

Accordingly, Applicant respectfully requests these rejections to be withdrawn.

Rejections under 35 U.S.C. § 112 ¶ 2

Claim 10 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicant has amended claim 10 to more clearly recite the invention. Claim 10 is now in definite form. Accordingly, Applicant requests this rejection be withdrawn.

Rejections under 35 U.S.C. § 103

Claims 1, 2, 7 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,107,066 to Toth *et al.* (hereinafter “Toth”) in view of 3GPP TS 25-346, V1.10 (2002-5) (hereinafter “Ref. A”). Claims 3, 10, 12 and 13 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over Toth in view of Ref. A and further in view of 3GPP TS 23-346, V1.1.0 (2002-9)) (hereinafter “Ref. B”). Applicant respectfully traverses these rejections for the following reasons.

As noted in earlier responses, embodiments of the present invention provide the advantage that the establishment of the multicast/broadcast service context of a controlling device and the establishment of the user equipment multicast/broadcast service context are not required to be effected simultaneously. Accordingly, claim 1 recites that “establishing a user equipment specific multicast/broadcast service context ... is capable of being effected at a different time from the controlling device multicast/broadcast service context establishing procedure....”

As previously noted by Applicant, the references cited by the Examiner neither teach nor suggest these features of the present invention. Specifically, Toth does not relate to, and therefore does not address issues related to, a system in which the CRNC and the SRNC are different controllers. Rather, Toth merely discloses radio access nodes which perform both functionalities. There is no teaching or suggestion of different controllers in the radio network. Since the system of Toth does not include different controllers CRNC and SRNC, the issues related thereto are not addressed by Toth. Accordingly, there is no teaching or suggestion in Toth that the establishment of the controlling device multicast/broadcast service context and the establishment of the user equipment multicast/broadcast service context are not required to be effected simultaneously.

Reference A fails to cure the deficiencies of Toth. As described in the Specification, Applicants recognized the issues presented by Reference A and provide an advantageous solution. See Specification, page 3, paragraphs [0007]-[0008]. Specifically, Reference A fails to teach or suggest at least the establishment of the controlling device

multicast/broadcast service context and the establishment of the user equipment multicast/broadcast service context not being required to be effected simultaneously.

Thus, the cited references, either alone or in combination, fail to teach or suggest at least this feature of the claimed invention.

In the “Response to Arguments” section of the Office Action, the Examiner argues that it is not clear what advantage is particularly realized by embodiments of the present invention. In this regard, Applicant reiterates arguments previously presented in Applicant’s reply filed on May 29, 2007.

As described in the specification and as noted above, embodiments of the present invention provide the advantage that the establishment of the multicast/broadcast service context of a controlling device and the establishment of the user equipment multicast/broadcast service context are not required to be effected simultaneously. This advantage is particularly realized when the SRNC and the CRNC are different controllers. See e.g., Specification, page 3, paragraph [0008]. This aspect of the invention is recited in each of the independent claims. For example, claim 1 recites a “radio access network comprising a plurality of user equipment, at least another serving device, and controlling devices” Applicant has amended each of the independent claims to more clearly recite this feature. For example, claim 1 was previously presented as being amended to recite “the controlling devices being different from the at least another serving device”

In addition the aforementioned advantages, Applicant directs the Examiner’s attention to paragraphs 21-24, where these advantages are explicitly disclosed within the present application.

Applicant again notes that “establishing a user equipment specific multicast/broadcast service context by the serving device of the core network, wherein this establishing procedure is capable of being effected at a different time from the controlling device multicast/broadcast service context establishing procedure” is not taught or suggested in any cited reference. In particular, the context establishment procedures of embodiments of the present invention are lacking in the prior art. These procedures, for example, can be seen in Figure 1, steps 3, 4,

and 5, relating to the multicast/broadcast service context establishment procedure of a controlling device, which describes that a multicast/broadcast service context of a controlling device (e.g., the CRNC) is established by a serving device of the core network (e.g., the SGSN). Such procedures are further described in the specification. See e.g., Specification, ¶¶ [0033] and [0034].

Once the aforementioned context establishment procedure is terminated (for the radio access network), a different context establishment procedure begins (see Figure 1 steps 6-13, Specification, ¶ [0040]). The MBMS service is then “considered as one service among the other user equipment UE specific services (step 13).” Specification, ¶ [0045]). Thus, the specification describes that, in embodiments of the invention, the context establishment procedures by a serving device of the core network can be effected upon a different time for user equipment specific services context an respective context of a controlling device of a radio access network.

Contrary to the Examiner’s assertions, Toth fails to teach or suggest this feature. For example, Toth discloses the same procedure for both any radio access node and any user equipment {MS}, as clearly illustrated in Figure 3 of Toth. Further, Toth describes this singular procedure as “the procedure for establishing the multicast session.” Toth, col. 6, lines 5-6.

In regards to Ref. A, Ref. A merely provides that a controlling radio network controller and a serving radio network controller can be different radio access nodes. For example, Ref. A discloses that “the details of when the signaling flow is initiated are to be defined in SA2,” and “NOTE: The signaling flow for linking a UE to the established MBMS service context is not yet included.” Ref. A, § 7.1.1, line 3 and line 9 (emphasis added). As is clearly provided in the aforementioned passages, the solutions proposed by the embodiments of the present invention are neither taught nor suggested by Ref. A.

To establish a *prima facie* case of obviousness, ... the prior art reference must teach or suggest all the claim limitations.” (M.P.E.P. § 2142). The cited art either alone, or in combination, fails to teach or suggest the proposed embodiments claimed present application. Accordingly, claims 1, 7 and 10-12 and 13 are patentable.

Claims 2, 3 and 4 depend either directly or indirectly from allowable claim 1, and are, therefore, patentable for at least that reason, as well as for additional patentable features when that claim is considered as a whole.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date: December 19, 2007

By /G. Peter Albert Jr./

FOLEY & LARDNER LLP
Customer Number: 30542
Telephone: (858) 847-6735
Facsimile: (858) 792-6773

G. Peter Albert Jr.
Attorney for Applicant
Registration No. 37,268